

BOARD OF APPEALS CASE NO. 5229

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BEFORE THE

APPLICANTS: Keith & Marcella Kaiser

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a deck within
the required rear yard setback; 1037 Irwins
Choice, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 2/20/02 & 2/27/02

HEARING DATE: April 3, 2002

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Record: 2/22/02 & 3/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Keith and Marcella Kaiser, are requesting a variance, pursuant to Sections 267-36B, Table VI, and 267-23C(1)(a)(6) of the Harford County Code, to construct a deck within the required twenty-three (23) foot rear yard setback (19 feet proposed) in an R3/Urban Residential District.

Mr. Gerald Wolff appeared on behalf of the Applicants. Mr. Wolff stated that he was the President of L.G. Wolff & Associates and was instrumental in the engineering and design of the Applicant's proposed improvements. Mr. Wolff described the lot as one of the few developed lots in Irwins Choice subdivision. Most of the houses are under construction or have not yet started. The subject lot is located on a curve in the road and is an irregularly shaped lot. The other residences next to the Applicants' arc away from the Applicants' house. Proposed is a deck 23 feet by 19 feet in dimension that will complement an existing in-ground pool. Because of the irregular shape and location of a drainage and utility area, the rear yard available for backyard improvements is severely reduced. In the opinion of the Applicant, because of the lot configurations and overall topography, the Applicant's deck will not be visible from other lots. The witness also pointed out that, although the rear yard setback will be reduced by 4 feet, there is an existing 10 feet of open space between the Applicant's lot and the lot to the rear of the Applicant's so the overall setback requirements of the Code are satisfied.

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The Department of Planning and Zoning concluded that the Applicant's lot is unique in that it is irregularly shaped, causing a diminished rear yard and it is located on an interior curve of the road, giving Applicants' house a unique perspective as to other houses adjacent to Applicants'. The Department did not find that any adverse impacts would result from construction of the deck within the rear yard setback as proposed. The Department stated, "The Department finds that the property is unique. The shape and size of the deck have been designed to complement the shape and location of the existing in-ground pool. The deck will be consistent with other accessory structures in the neighborhood. The request, if approved, will not have an adverse impact on the intent of the Code or the adjacent properties."

There were no persons who appeared in opposition to the subject request.

CONCLUSION:

The Applicants, Keith and Marcella Kaiser, are requesting a variance, pursuant to Sections 267-36B, Table VI, and 267-23C(1)(a)(6) of the Harford County Code, to construct a deck within the required twenty-three (23) foot rear yard setback (19 feet proposed) in an R3/Urban Residential District.

Harford County Code Section 267-23C(1)(a)(6) provides:

"Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[1] Awnings, canopies, cornices, eaves or other architectural features: three (3) feet.

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

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The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Hearing Examiner concludes that the lot is topographically unique, being irregularly shaped and constrained to the rear by a drainage and utility area. Additionally, the placement of the dwelling on a lot that is on an interior curve gives the dwelling a unique perspective as to other homes adjacent to the subject dwelling. There is an existing 10 foot open space area to the rear which effectively provides the setback required by the Code even after this minor encroachment. None of the adjacent properties will have a view of the deck so no adverse impacts to those properties will occur. The lot to the rear is undeveloped but is planned for a townhouse complex with parking areas and access roads. These will be sufficiently far away to satisfy the Code requirements of adequate rear yard setbacks.

The Hearing Examiner recommends approval of the request, subject to the Applicants obtaining any and all necessary permits and inspections.

Date: APRIL 19, 2002

William F. Casey
Zoning Hearing Examiner